4. The transparent skin care composition of Claim 2, wherein the ratio of polyoxyethylene alkyl phosphate or salts to polyoxyethylene castor oil and/or polyoxyethylene hydrogenated castor oil ester is from about 4:1 to about 2:3.

REMARKS

Formal Matters

The examiner objected to the specification on the basis the applicants have improperly states that the term "comprising" encompasses the terms "consisting of" and "essentially consisting of." The intent was to make it clear that there would be antecedent basis for the terms "consisting of" or "consisting essentially of" in the event that any claim is amended by replacing "comprising" with one of these alternatives. The fact of the matter is that antecedent basis is assumed by both practitioners and examiners and there are a number of examples of where claims have been so amended within the context of MPEP § 2111.03 without objection based on lack of antecedent basis. It is respectfully requested that the examiner withdraw the objection to this statement.

The examiner also alleges that the applicants' use of the term "ratio" in claims 2, 4 and 5 as being vague because it is not clear whether the measurement is in weight or volume. The specification was amended as above to obviate the objection. Antecedent basis for this is found in the examples on page 19 wherein the ingredients of the examples are expressed in terms unit weight percentage, see line 15-18.

The examiner rejected claim 4 as it recites surfactants that are not literally found in claim two from which it depends. The applicants have amended claims 4's inadvertent typographical error.

Claims 1, 2, and 4-10 are rejected under 35 U.S.C. §103(a) as unpatentable over Sumida in view of Derwent Acc. No. 1991-202615 [abstract of JP 2799600 B2 ("Kobayashi abstract")].

The applicants herein respectfully traverse the examiner's rejection on the basis of these references. Sumida discloses transparent microemulsions made by preliminary emulsions using a reactor such as a high pressure microfluidizer (see page 6, processing directions). As noted in Sumida's comparative example 1 on page 11, transparent microemulsions cannot be made without using the microfluidizer.

While the present invention doesn't prohibit such equipment, it is not necessary to use it to create the clear emulsion. This being the case, there is an aspect of the present invention that was unapprcciated by Sumida. This aspect of the present invention, obviously absent in Sumida's teaching, is the novel combination of surfactants of claim 1. One skilled in the art would not be motivated by Sumida's teaching to develop the novel combination of surfactants as claimed herein to make a transparent emulsion without using the microfluidizer.

Kobayashi application, translation herein submitted for the record, discloses a water-in-oil composition having very low levels of wat r, 0.5% in all thc exampl s shown in Table 1, page 5. The present invention contains at least 60% water. On this basis one skilled in th art would consider th